

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Gonzales, Houma and Westwego, Louisiana )  
and Hattiesburg, Mississippi) )

MB Docket No. 02-295  
RM- 10580

To: Chief, Audio Division  
Media Bureau

REPLY COMMENTS

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## SUMMARY

In these Reply Comments, Guaranty Broadcasting Company, LLC, responds to the Comments of Clear Channel Broadcasting Licenses, Inc., which support adoption of a change in the FM Table of Allotments (1) to downgrade WUSW, a Class C FM station allotted to Hattiesburg, Mississippi, to Class CO, and to change its allotted city of license to Westwego, Louisiana, nearly 200 kilometers away in the heart of the New Orleans Urbanized Area, and (2) to downgrade KSTE-FM, a class C FM station allotted to Houma, Louisiana, to Class CO, and to change its allotted city of license to Gonzales, Louisiana, in the Baton Rouge Urbanized area. Guaranty shows herein that the proposed changes to the FM Table of Allotments would disserve the public interest and should be denied.

Despite the claims advanced by Clear Channel once again in its Comments, Westwego is not a separate and distinct community, but rather is a small and interdependent part of the New Orleans Urbanized Area. Clear Channel has failed to demonstrate that Westwego qualifies as a “community” under Section 307(b) criteria, and its proposal must be considered for what it is – an attempt by Clear Channel to acquire another New Orleans station – a station it likely could not acquire under current FCC standards.

Similarly, contrary to Clear Channel’s assertions, Gonzales is located within the Baton Rouge Urbanized Area. Because Clear Channel has not even tried to demonstrate the independence of Gonzales, the proposal to deprive the much larger city of Houma of only its second FM station must fail.

Finally, Guaranty urges consolidation of this proceeding with a timely filed Notice of Rulemaking that offers a superior alternative means of providing Gonzales with its own first local service.

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To: Chief, Audio Division		
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**REPLY COMMENTS**

Guaranty Broadcasting Company, LLC (“Guaranty”), by its attorneys, and pursuant to Section 1.415 of the Commission’s Rules, hereby submits its Reply Comments which respond to the Comments submitted by Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”) in connection with the *Notice of Proposed Rulemaking in MB Docket No. 02-295*, released by the Commission on September 27, 2002 (the “*NPRM*”).

**I. Introduction**

1. The *NPRM* proposes to amend the FM Table of Allotments to downgrade WUSW(FM), Hattiesburg, Mississippi, from Channel 279C to Channel 279C0, move its reference point 193.53 kilometers to the south, and change its city of license from Hattiesburg, Mississippi, to Westwego, Louisiana, an integral part of the New Orleans Urbanized Area. It also proposed to amend the FM Table of Allotments to downgrade KSTE-FM<sup>1</sup> from Channel 281C to Channel 281C0, move its reference point 21.93 kilometers to the southwest, and change

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<sup>1</sup> The *NPRM* refers to this station as KFXN(FM), the former call sign of the Houma station. References herein are to the station’s current call sign.

its city of license from Houma, the central city in the Houma Urbanized Area, to Gonzales, Louisiana, a small city in the Baton Rouge Urbanized Area.

2. On November 18, 2002, Guaranty Broadcasting of Baton Rouge, LLC (“Guaranty Baton Rouge”), a commonly controlled affiliate of Guaranty, submitted a Petition for Rulemaking pursuant to Section 1.420(i) proposing that, instead of downgrading KSTE-FM and moving it from Houma to Gonzales, that the Commission should retain KSTE-FM in Houma, but reallocate Channel 264C1 from Baton Rouge, Louisiana, to Gonzales, Louisiana for use by WTGE(FM), presently licensed to Baton Rouge, of which Guaranty Baton Rouge is licensee. On the same date, Guaranty and Guaranty Baton Rouge jointly filed a Petition for Consolidation requesting that the new rulemaking be consolidated with the instant proceeding.<sup>2</sup> Guaranty’s alternative allotment proposal for Gonzales, Louisiana offers a number of public interest benefits to the allotment tentatively proposed in the *NPRM*. It will provide a local transmission service to the City of Gonzales, without withdrawing one of only two FM channels from Houma and Terrebonne Parish, as is proposed in the *NPRM* and supported by Clear Channel. The reallocation of WTGE instead of KSTE-FM to Gonzales will also eliminate the substantial net population loss that would result from approval of the move of Channel 281C from Houma to Gonzales as a Class CO facility.

3. On November 18, Guaranty attempted to submit electronically its Opposition Comments with Alternative Proposal, which set forth strong arguments against the proposed

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<sup>2</sup> As Guaranty and Guaranty Baton Rouge indicated in their previous pleadings, this proposal should be treated as a counterproposal in this proceeding. However, because it is unclear whether the alternative proposal is sufficiently mutually exclusive to qualify for treatment as a counterproposal, the timely filed alternative rulemaking should be consolidated in this proceeding and considered before a determination is made as to which proposal, if either, justifies preference as a first local service.

change in the Table of Allotments.<sup>3</sup> On November 19, 2002, Guaranty submitted its Motion to Accept Comments as Timely Filed. Guaranty demonstrated therein that Westwego is an integral part of the New Orleans Urbanized Area and that the *Tuck*<sup>4</sup> showing submitted by Clear Channel in its Petition for Rulemaking is both inadequate and so misleading as to bar reliance upon it by the Commission. Guaranty also demonstrated that, contrary to Clear Channel's earlier claims, Gonzales, Louisiana, is within the Baton Rouge Urbanized Area, and that the proposed reallocation cannot be made in the absence of a *Tuck* showing, something that Clear Channel has not done. No reallocation of KSTE-FM from Houma to Gonzales may be undertaken until a *Tuck* showing is submitted, and interested parties, such as Guaranty, have had **an** opportunity to examine and comment on that showing.<sup>5</sup>

4. On November 18, 2002, Clear Channel Broadcasting Licenses, Inc., submitted Comments in support of the revised allotments set forth in the *NPRM*.<sup>6</sup> In its Comments, Clear Channel reasserts that Westwego, Louisiana, is independent from New Orleans under the *Tuck* criteria, citing the arguments and documents submitted in its February 25, 2002, Petition for

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<sup>3</sup> Despite repeated efforts, the Commissions Electronic Comment Filing System would not accept Guaranty's submission. Copies were delivered electronically to the Chief and Assistant Chief of the Audio Division of the Media Bureau on November 18, 2002.

<sup>4</sup> *Faye & Richard Tuck*, 3 FCC Rcd 5314 (1988) ("*Tuck*"), citing *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951) ("*Huntington*").

<sup>5</sup> The alternative proposal of Guaranty, on the other hand, requires no *Tuck* showing because it proposes the reallocation from a larger community to a smaller community in the Baton Rouge Urbanized Area without a change in service area or populations, and requires no first local service preference to justify a service loss to over 500,000 residents, as does the Clear Channel proposal.

<sup>6</sup> The underlying Petition for Rulemaking had been filed pursuant to Section 1.420(i) by Capstar TX Limited Partnership, then licensee of Station WUSW(FM), and Clear Channel Radio Licenses, Inc., then licensee of KSTE-FM.

Rulemaking, and claimed that Westwego warrants a first local service preference.<sup>7</sup> Clear Channel's Comments also requests that the Commission reallocate Channel 281C from Houma, Louisiana, to Channel 281C0 at Gonzales, Louisiana for Clear Channel station KSTE-FM. Clear Channel reiterates its earlier claim that this would provide a first local service for Gonzales.

5. Clear Channel provides no new evidence in its Comments to demonstrate either that Westwego is a separate, independent community and not integrated with the New Orleans Urbanized Area, or that Gonzales is not part of the Baton Rouge Urbanized Area. No showing is made under *Tuck* that Gonzales is a separate, independent community not interdependent with the rest of the Baton Rouge Urbanized Area. Instead, Clear Channel repeats some of the very same false statements it made in its Petition for Rulemaking, and actually submits some evidence that proves the point that Westwego is an integral part of the New Orleans Urbanized Area.

## **II. Discussion**

6. Nothing in the Clear Channel Comments provides a basis for the proposed reallocations, both of which Guaranty opposes. Clear Channel seeks to strip Class C and B FM channels from deserving communities in the smaller, independent advertising markets of Hattiesburg and Houma, and moving them dozens or hundreds of kilometers into the core of the New Orleans and Baton Rouge major advertising markets. Clear Channel attempts to cloak its intentions by claiming that they will advance a preferential public interest goal -- providing a first local transmission service to two small constituent communities in the major New Orleans and Baton Rouge Urbanized Areas. Approval of its proposal will surely provide Clear Channel with millions in windfall profits, but it will deprive smaller communities of critical local voices,

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<sup>7</sup> Clear Channel spends the bulk of its Comments in an attempt to prove that Westwego is independent of the Slidell Urbanized Area.

while adding yet more stations to urban areas that are already saturated with radio stations – many already owned by Clear Channel.'

7. The Commission is faced here with whether the public interest will be advanced by taking away service from the small Hattiesburg and Houma markets – in the case of Houma taking away one of only two FM stations licensed to the entire parish (county) in which Houma is located – in order to provide yet one more station to New Orleans and Baton Rouge. Guaranty submits that this proposal only exacerbates the existing imbalance in the availability of local FM radio service between the two largest radio markets in Louisiana, which are already extremely well served, and smaller markets in Louisiana and Mississippi, which have much less local radio presence or local news and public affairs coverage. Clearly the reallocation set forth in the *NPRM* does not result in a preferential arrangement of service to the states and the communities under Section 307(b) of the Communications Act of 1934, as amended.

8. Section 307(b) requires that the Commission

make such distribution of licenses . . . among the several States and communities as to provide a fair, efficient and equitable distribution of radio service . . . .

47 U.S.C. § 307(b). Clear Channel has proposed to move its Hattiesburg and Houma stations to Westwego and Gonzales, rather than the real target communities of New Orleans and Baton

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<sup>8</sup> FCC records show that Clear Channel currently operates 2 AM and 4 FM stations licensed to New Orleans: WODT (AM), 5 kW fulltime; WYLD(AM), 10kW day, .5 kW night; WYLD-FM, 100kW; WQUE-FM, 100kW; WEZB-FM, 100kW; and WRNO-FM, 100 kW. In addition, Clear Channel is the licensee of 100kW station KSTE-FM, which places a 70 dBu signal over most of New Orleans; this signal will be diminished somewhat if the instant reallocations are approved. Clear Channel is licensee of WYNK (FM), 100kW, WFMF (FM), 100kW, WJBO (AM), 5.0 KW fulltime, and WYNK (AM), 5.0 kW day, Baton Rouge, and KRVE (FM), 43.0 kW, Brusly, and WSKR, 10.0 kW day, 1.0 kW night, Denham Springs, all of which provide city grade coverage to the Baton Rouge Urbanized Area. If KSTE-FM is moved to Gonzales, that station will also provide city grade coverage to much of the Baton Rouge Urbanized Area.



Rouge. If it were to admit it was seeking additional New Orleans and Baton Rouge stations, its proposal would be denied summarily because that would not provide a fair, efficient or equitable division of radio service among the communities involved. Its proposed reallocation is specifically designed to obtain a first transmission service preference, thus justifying the proposed move of channels from one community to another, a practice which the Commission ordinarily does not favor. Clear Channel's proposal, however, is to provide a "local service" in name but not reality. Nowhere in its Comments does Clear Channel state that it will provide a true local service to either Westwego or Gonzales. It makes no commitment to locate studios in either community, to originate programming in those cities, or even to offer Westwego-oriented local news or public affairs programming..<sup>9</sup>

9. The Commission is aware of such possibilities of "gaming" its preference system. It has stated that it does

not intend to apply the first local service . . . blindly. We recognize that an inflexible application of the preference, without further analysis, could consistently result in our finding that a reallocation leading to a first local service for a station of a much larger adjacent metropolitan center justifies removing a local service from a more remote community. We wish to dispel any concern that our new rules would lead to such a result.

*See Modification of FM and TV Authorizations*, 5 FCC Rcd 7094,7096 (1990). Thus, the Commission has made clear that it does not intend to permit the manipulation of its allocation criteria in proposals in situations where, as here, a Section 307(b) preference is sought for an urban community that is interdependent with and part of a larger metropolitan area. In such

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<sup>9</sup> There is a track record in this regard that cannot be overlooked. KSTE-FM has already abandoned Houma, its city of license, for New Orleans, over 50 road miles away. The station's studios, offices and public file are located in the city of New Orleans, and the station's news and public affairs programming is New Orleans-centric, with no specific focus on Houma or Terrebonne Parish, in which Houma is located.

cases, the Commission has stated, it will not grant a Section 307(b) first local service preference to the interdependent suburban community, *Id.*

10. In keeping with this commitment, the Commission has, over the years, attempted to adopt standards to insure that Section 307(b) criteria are applied fairly and rationally. These are reflected in the currently applicable *Huntington* and *Tuck* criteria. Under *Huntington*, where competing applications are filed for separate communities that are dependent upon, and contiguous to, a central city, and the applicants propose sufficient power to serve the entire metropolitan area, the Commission treats the entire metropolitan area as one community for Section 307(b) purposes.” *Tuck* is the most recent attempt by the Commission to clarify the *Huntington* standard. Under *Tuck*, the Commission indicated that “Urbanized Area is an appropriate definition of ‘community’” under *Huntington*.” The Commission also stated that the relationship between a proposed city of license and a larger city is the critical consideration in deciding whether *Huntington* applies, and that the required showing of interdependence will vary depending on the degree to which the relative size and proximity of the communities in question suggest that the proposed community of license is simply an appendage of a large central city, *Tuck* sets forth eight criteria to be considered in determining whether a community for which a Section 307(b) preference is sought is truly independent of a larger, nearby community,<sup>12</sup>

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<sup>10</sup> *Accord, Debra D. Carrigan*, 100FCC 2d 721,728-31 (Rev. Bd. 1985), *review denied* 104FCC 2d 826 (1986), *aff’d sub nom. Interstate Broadcasting System v. FCC*, 836F.2d 826 (D.C. Cir. 1988).

<sup>11</sup> *Tuck*, ¶48.

<sup>12</sup> These criteria are:

- The extent to which community residents work in the larger metropolitan area, rather than the specified community

11. Applying the *Tuck* criteria to this case, it is clear that Westwego is an interdependent part of the far larger New Orleans Urbanized Area, and Clear Channel has not shown, either in its Petition for Rulemaking or in its Comments, that Westwego is separate, independent, and not interdependent with the entire New Orleans Urbanized Area. Clear Channel has not even attempted to show that Gonzales is separate, independent, or not an interdependent part of the Baton Rouge Urbanized Area, in which it is located. Under the circumstances, a first service preference cannot be granted to either Westwego or Gonzales.

**A. Westwego Reallotment**

12. Clear Channel asserts in its Comments that Westwego is separate and independent from, and not an interdependent part of, the Slidell, Louisiana, Urbanized Area. Guaranty agrees. The reason that Westwego is separate and independent from, and not an interdependent

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- Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests
  - Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area
  - Whether the specified community has its own local government and elected officials
  - Whether the smaller community has its own telephone book provided by the local telephone company or zip code
  - Whether the community has its own commercial establishments, health facilities and transportation systems
  - The extent to which the specified community and the central city are part of the same advertising market
  - The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries.

part of the Slidell Urbanized Area is that Westwego instead is a constituent and interdependent part of the New Orleans Urbanized Area.

13. Clear Channel's Comments assert that Westwego, Louisiana, is independent from New Orleans under the **Tuck** criteria, citing the arguments and documents submitted in its February 25, 2002, Petition for Rulemaking. Its arguments are factually flawed. Guaranty will show that Westwego is, in fact, a small constituent community within the Greater New Orleans Metropolitan Area, and is totally interdependent with the New Orleans Urbanized Area.

14. Clear Channel claims in its Petition for Rulemaking, portions of which are incorporated by reference into its Comments, that "this relocation does not implicate the Commission's policy concerning the potential migration of stations for underserved rural areas to well-served urban areas." The case it cites for that proposition<sup>13</sup> does not stand for the principle that stations allotted to all smaller Urbanized Areas are fair game to be moved into larger urban areas. To the contrary, the Commission has required applicants proposing to move a station from a smaller Urbanized Area to a smaller community in a large Urbanized Area to demonstrate the independence of the smaller community. *Kankakee and Park Forest, Illinois*, DA 99-2563 (Released December 15, 1999) (proposal to move from Kankakee Urbanized Area to Park Forest, a community within the Chicago Urbanized Area requires showing Park Forest is separate from, and not interdependent with, Chicago).

15. The Clear Channel Comments cite the **Tuck** showing set forth in its Petition for Rulemaking, and claim that the earlier filing demonstrates that Westwego is not an interdependent part of the New Orleans Urbanized Area, and that the Urbanized Area should be recognized as its community of license for allocation purposes. However, the Tuck showing

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<sup>13</sup>

*Elizabeth City, North Carolina and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994).

submitted by Clear Channel contains numerous misleading assertions, and a number of materially false statements. These destroy any credibility which the study might otherwise be accorded.

16. Guaranty will address each of Clear Channel's arguments in support of its claim that Westwego is independent from, and not interdependent with, the New Orleans Urbanized Area. First, Clear Channel makes three generalized arguments under *Huntington*:

- "Westwego . . . is 27 kilometers away from New Orleans."<sup>14</sup> **This is simply not true!** In fact, the boundaries of Westwego and New Orleans adjoin! Westwego is located directly across the Mississippi River from the area in the City of New Orleans in which Tulane University, Loyola University, Audubon Park Zoo and one of the most exclusive residential areas of New Orleans are located." Indeed, none of the maps submitted in Exhibit A of Clear Channel's Petition, or Exhibit 2 of its Comments, identify the City of New Orleans in relation to Westwego, or clearly show Westwego's position in relation to the rest of the Urbanized Area. To end any confusion on this point, Guaranty is supplying Attachment A, which shows the entire New Orleans Urbanized Area, and identifies both New Orleans on Westwego.
- "Westwego . . . [is] located in Jefferson Parish . . . [and] New Orleans . . . [is] located in Orleans Parish."<sup>16</sup> While true, this is meaningless. New Orleans has been space constrained for many years by the boundaries of Orleans Parish, and the practical difficulty of expanding into any undeveloped areas, which are very low (the entire city is below sea level and depends on extensive levees and massive pumping facilities to prevent

<sup>14</sup> Comments, at 2. This is a repetition of Clear Channel's Petition, at 4.

<sup>15</sup> While there is no direct bridge across the Mississippi River at Westwego, the closest bridge across the Mississippi has been located at Bridge City, immediately adjacent to Westwego, for over 60 years, and it is nowhere near 27 kilometers from Westwego to the City of New Orleans over that bridge, or using the Gretna ferry. In any event, under *Tuck*, the question is the interdependence of Westwego with the entire New Orleans Urbanized Area. ("Urbanized Area is an appropriate definition of 'community' under *Huntington*.") Westwego is an integral part of the area known as the "Westbank" which stretches continuously along the Mississippi River in Jefferson, Orleans and Plaquemines Parishes (including Algiers, Gretna, Harvey, Marrerro, Westwego and other communities) across the River from the "Eastbank," which consists of the eastern portion of Jefferson Parish, the City of New Orleans, and portions of St. Bernard Parish.

<sup>16</sup> Petition, at 4

immediate flooding) and marshy. There is simply no new area to annex. The vast majority of growth for decades in the metropolitan area has been in Jefferson Parish. A majority of the population in the New Orleans Urbanized Area now lives in Jefferson Parish.<sup>17</sup> In any event, this argument overlooks the key point that, for *Huntington* purposes, the specified community must be contrasted with the Urbanized Area, not the largest city in the Urbanized Area. See paragraph 10, *supra*.

- “The 2000 Census population of Westwego (10,673) is 2.2 percent of the population of New Orleans (484,674).”<sup>18</sup> Again, this is true, but irrelevant. While this shows the tiny size of Westwego, it is more appropriate to compare it to the population of the New Orleans Urbanized Area, which is 1,009,283.<sup>19</sup> Using the appropriate comparison, it is clear that the specified community population is only about 1 percent of the community for *Huntington* purposes.

17. Clear Channel’s showing under the *Tuck* criteria equally is unavailing.

- The extent to which community residents work in the larger metropolitan area, rather than the specified community. The vast majority of Westwego residents work elsewhere in the Urbanized Area, not in Westwego. According Clear Channel’s own data, only 20% (794) of the workers living in Westwego (3,307) work in that place.<sup>20</sup> This fact is underscored by Exhibit 1 to Clear Channel’s Comments. According to that data, showing Place of Residence by Place of Work 1990, only 19.4% of the workers living in Westwego work in Westwego. In comparison, 9.4% work in the City of New Orleans, and the virtually balance work in Marrero, Harvey, Gretna, Metairie, Kenner, and other cities and places in the New Orleans Urbanized Area.
- Whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests. Clear Channel’s claim, restated in its Comments at 3, that Westwego has its own media is misleading, to say the least. *The Westwego Picayune* cited by Clear Channel is not an independent publication, but merely a small, twice-weekly insert in the *The New Orleans Times-Picayune*, the dominant newspaper of New Orleans and the entire New Orleans Urbanized Area. Even the claim that *The Westwego Picayune* focuses on local government,

<sup>17</sup> According to the 2000 U.S. Census, the population of New Orleans is 484,674, and that of Jefferson Parish is 455,466.

<sup>18</sup> Petition, at 4

<sup>19</sup> U. S. Census Bureau, *Profile of General Demographic Characteristics: 2000, Census 2000 Summary File 1 (SF 1) 100-Percent Data, New Orleans, LA Urbanized Area*.

<sup>20</sup> Comments, Exhibit 2, citing [factfinder.census.gov/servlet/DTTable?\\_ts=23301030604](http://factfinder.census.gov/servlet/DTTable?_ts=23301030604).

business and community news in Westwego is suspect. An examination of the portion included in Exhibit A to the Petition shows that the masthead also lists the communities of Avondale, Bridge City, Nine Mile Point and Waggaman, and a review of the four articles shown on the November 8, 2001, page shown in Exhibit 2 of Clear Channel's Comments shows articles about a book signing in Harvey, Louisiana, a prayer service in a Gretna, Louisiana, church, and a column entitled "Avondale Action." Not a single story deals with Westwego. Similarly, the five page print from the internet, from *The Times-Picayune*, entitled *Westwego Picayune News* for November 4 and 8, 2001, shows 44 entries. Stories feature New Orleans, Gretna, Marrerro, Slidell, Harvey, Algiers, Lafitte, the West Bank, Orleans Parish, and Jefferson Parish. A review of the current listings, for November 17 and 14, 2002, show a similar paucity of news relating to Westwego." In no way can this be said to represent a media outlet centered on Westwego.

- Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area. Clear Channel showing under this criterion is to attribute a statement from the City's Mayor, Robert E. Billiot, that residents of Westwego perceive their city as a separate community, distinct from New Orleans. No affidavit is submitted to support this attribution. Instead, there is a single quote from Mayor Billiot's web site, that "I work with all my energy to make Westwego a better place for all of us to live. Our entire community has been united by the fact that Westwego is a great place to live in, and it is our obligation to make it even better for those who come after us."<sup>22</sup> This hardly says that Westwego is separate from and not an integral, interdependent part of the New Orleans Urbanized Area. Indeed, the official Jefferson Parish web page, which covers the entire parish (county) in which Westwego is located, describes Jefferson Parish as "New Orleans' first suburb – a bedroom community west of the city that received the first great migration of middle-class families from the 1950's to the 1970's."<sup>23</sup> Also, local government compiles demographic data is compiled for the entire "Westbank" area of Jefferson Parish.<sup>24</sup>
- Whether the specified community has its own local government and elected officials. Guaranty does not dispute that Westwego is a municipal entity under Louisiana law, and therefore it has its own city government and elected officials. It must be recognized, however, that Westwego is

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<sup>21</sup> See Attachment B.

<sup>22</sup> Comments, Exhibit 2, citing <http://www.rebilliot.com/>:

<sup>23</sup> See Attachment C.

<sup>24</sup> *Id.*

subject to the authority of other regional governmental entities with power far beyond the boundaries of Westwego. These include the Jefferson Parish Council, the Jefferson Parish President, the Jefferson Parish Sheriff, the Jefferson Parish District Attorney, the Jefferson Parish Assessor, the Jefferson Parish Public School Board, the Jefferson Parish Coroner, the Jefferson Parish Clerk of Court and many other entities legally separate from the Jefferson Parish Council with jurisdiction over Westwego activities.”

- Whether the smaller community has its own telephone hook provided by the local telephone company or zip code. In its Comments, Clear Channel repeats its claim that Westwego has two telephone directories, published by BellSouth and Sunshine Pages. **This is another example of false or misleading information** used by Clear Channel to support its claim. In fact, there are no print telephone directories specifically for the community of Westwego. According to the reference librarian of the Jefferson Parish library, BellSouth does not publish a separate directory for Westwego; entries are included in the directory which covers the entire Greater New Orleans area. The *sunshinepages*, published by EATEL, cover “The Complete WestBank.”<sup>26</sup> The area encompassed by that directory includes the West Bank area of Jefferson Parish, including Bridge City, Gretna, Harvey, Marrero, Lafitte, Barataria, Grand Isle, and Westwego, as well as all of Plaquemines Parish, from Belle Chasse to Burrwood. While two zip codes serve Westwego, zip code 70094 is shared with Bridge City, and zip code 70096 is shared with Waggaman.<sup>27</sup>
- Whether the community has its own commercial establishments, health facilities and transportation systems. Westwego does have the typical facilities of a bedroom community, including restaurants, supermarkets, gas stations, and other service industries. There are few significant non-service businesses, and those cited by Clear Channel are based on the New Orleans regional economy and the Mississippi River upon which it depends, not on Westwego demand. There are no hospitals in Westwego; residents must travel outside Westwego to other parts of the Urbanized Area for hospital treatment.<sup>28</sup> Nor does Westwego have an independent transportation system. It is served by Jefferson Transit, a Jefferson Parish transit system that provides service into central New Orleans from Westwego.<sup>29</sup>

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<sup>25</sup> See Attachment D.

<sup>26</sup> See Attachment E.

<sup>27</sup> See Attachment F.

<sup>28</sup> See Attachment G.

<sup>29</sup> See Attachment H.



- The extent to which the specified community and the central city are part of the same advertising market. This factor is ignored by Clear Channel Westwego is not a distinct advertising market. It is treated as part of the New Orleans advertising market. Both Nielsen (television) and Arbitron (radio) include all of Jefferson Parish, including by definition, Westwego in the New Orleans Metro market.
- The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. Clear Channel admits that Westwego relies on other parts of the New Orleans area for key governmental services. While there is a local police and fire department, these services rely heavily on the West Jefferson Sheriff's Office and Fire Department for assistance, and the West Jefferson Sheriff's Office has primary jurisdiction over many matters. Despite the gloss put forth by Clear Channel, the fact is that Westwego has no municipal public schools (they are provided by Jefferson Parish under control of the Jefferson Parish School Board) or libraries (again provided by the Jefferson Parish Library System). A child desiring to attend public high school must leave Westwego to attend West Jefferson High School or another area school.

In sum, there is simply no rational basis for concluding that Westwego is a separate, independent entity that is interdependent with the rest of the New Orleans Urban Area.

18 Clear ~~Channel~~ wants to move WUSW from Hattiesburg, which is located outside all rated Arbitron radio market has a population of 44,000 and is located within an urbanized area with a population of only 61,465,<sup>30</sup> into the heart of the New Orleans Urbanized Area, a top 50 major advertising market<sup>31</sup> with an Urbanized Area population of 1,009,283, in order to dramatically increase the value of WUSW, and further increase the share of radio advertising revenues held by Clear Channel in the important New Orleans market. Clear

<sup>30</sup> U. S. Census Bureau, *Profile of General Demographic Characteristics: 2000, Census 2000 Summary File 1 (SF 1) 100-Percent Data, Hattiesburg, MS Urbanized Area.*

<sup>31</sup> New Orleans is the 40<sup>th</sup> ranked radio advertising market by revenue, and is the 44<sup>th</sup> largest Metro by population. BIA Financial Network, *Investing in Radio 2002*, 3<sup>rd</sup> Edition.

<sup>32</sup> U. S. Census Bureau, *Profile of General Demographic Characteristics: 2000, Census 2000 Summary File 1 (SF 1) 100-Percent Data. New Orleans, LA Urbanized Area.*

Channel seeks to make this change through the allocation process rather than purchasing another FM station in New Orleans: Clear Channel knows it would be difficult or impossible to meet FCC concentration concerns in the context of an assignment or transfer *application*.<sup>33</sup> While perfectly understandable from a business point of view, these motives offer no public interest justification for the proposed reallocation, which is in fact inconsistent with public interest as expressed in Section 307(b) of the Communications Act.

19. Grant of the proposed allotment change to move WUSW over 100 miles from Hattiesburg to Westwego would constitute an egregious example of manipulation of the Commission's allotment criteria by granting a Section 307(b) first local service preference in a situation where a preference is sought for an urban community – Westwego – that is interdependent with and part of a larger metropolitan area – New Orleans. The fair, efficient and equitable division of this nation's radio resources, as well as obvious public interest principles, demands that the proposed reallocation, which would deprive the citizens of Mississippi of a vital service, be *denied*.<sup>34</sup>

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Indeed, earlier in 2002, Clear Channel sought to “swap” station KKND(FM), a 100kW station licensed to Port Sulphur, Louisiana, for 100kW station WRNO-FM, New Orleans. The application was “red-flagged” over Commission concerns that even a station swap in the highly concentrated New Orleans radio market would give Clear Channel an inappropriate share of advertising revenues. See Attachment I. According to information filed by the other party to the proceeding, Clear Channel had a 36% share of the New Orleans market revenues, and another party had 46.5%. *Id.* Of course, the proposal to move WUSW to a location with reference points very near to the existing transmitter sites of Clear Channel's New Orleans FM stations offers the potential to dramatically increase revenues over those generated by KSTE-FM, which has been unable to provide a strong signal to the entire New Orleans Urbanized Area due to spacing constraints, and which Clear Channel now seeks to move further west to serve the Baton Rouge area.

<sup>34</sup>

As set forth below, should the Commission for some reason desire to allot the WUSW frequency to Westwego, there is no reason to deprive Houma of its second local FM station. This pleading presents the Commission with an alternative that would allow KSTE-FM to remain at Houma, while providing allotments to Westwego and Gonzales.

## **B. Gonzales Reallotment**

20. Clear Channel's Comments reiterate its support for reallotment of Clear Channel's Class C Station KSTE-FM, Houma, Louisiana, to operate as a downgraded Class CO station at Gonzales, Louisiana. Clear Channel Comments assert that this would provide a first local service for Gonzales.

21. Although Gonzales is near the much larger community of Baton Rouge, Louisiana, and a Section 307(b) preference is claimed, Clear Channel has not provided in either its Petition or Comments a *Huntington* or a *Tuck* analysis with respect to that proposed community of license. It asserts that such a study is not necessary because Gonzales is outside all Urbanized Areas.<sup>35</sup> It also claims that the reallocated and downgraded KSTE-FM will encompass only two percent of the Baton Rouge Urbanized Area.<sup>36</sup> Clear Channel submitted a map as part of its Petition that shows that Gonzales is more than 20 kilometers from the nearest part of the Baton Rouge Urbanized area, and that the proposed KSTE-FM signal will cover only a fraction of the Urbanized Area.<sup>37</sup>

22. Clear Channel's assertions in this regard are, once again, simply wrong. **The developed area of Gonzales is in fact part of the Baton Rouge Urbanized Area!**<sup>38</sup> The Urbanized area runs continuously from Sorrento, which is southeast of Gonzales, through the city of Baton Rouge, to encompass Baker, Louisiana north of Baton Rouge. Moreover, Ascension Parish, in which Gonzales is located, is also entirely within the Baton Rouge Arbitron

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<sup>35</sup> Petition, at 11.

<sup>36</sup> Petition, Technical Exhibit, at 6.

<sup>37</sup> Petition, Technical Exhibit, Figure 10.

<sup>38</sup> U.S. Department of Commerce, Economics and Statistics Administration, U. S. Census Bureau, Urbanized Area Outline Map (Census 2000). Baton Rouge, LA.

Metro.<sup>39</sup> These false statements undercut the very basis of the *NPRM*, and require its immediate dismissal.

23. Because Gonzales is within the Baton Rouge Urbanized Area, the Commission may not act upon the pending rulemaking proposal without requiring the submission of such a showing, as well as giving the public, including Guaranty, the opportunity to comment on and to rebut such a showing.<sup>40</sup> See *Kankakee and Park Forest, Illinois, supra*. This is not changed by the fact that a lightly-populated portion of Gonzales is outside the Baton Rouge Urbanized Area, or that a station at the proposed reference point would not serve all of the Baton Rouge Urbanized Area. See *Malvern and Bryant, Arkansas*, 14FCC Rcd 3576 (1996) (*Tuck* showing required when the proposed community was only partly within an Urbanized Area and a station would serve less than 1 percent of the Urbanized Area). Without a *Tuck* showing, the proposed reallocation cannot be granted.

24. While Guaranty need not, and will not, directly address the *Tuck* criteria until Clear Channel, the proponent of a Section 307(b) preference for Gonzales, submits such a showing, a comparison of Houma and Gonzales does not auger well for Clear Channel. Houma has been a fast-growing community, with a 2002 population of 32,393.<sup>41</sup> Gonzales, population 8,156,<sup>42</sup> has a population only one-quarter as great as Houma. Moreover, Houma is the hub of

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<sup>39</sup> See Attachment J.

<sup>40</sup> Because Clear Channel has not made a *Tuck* showing, Guaranty will not attempt to rebut the *Tuck* factors in advance. Suffice it to say that there is substantial evidence on each of the *Tuck* factors which demonstrate its ties to, and interdependence with, the Baton Rouge Urbanized Area. Guaranty will submit such evidence at the appropriate time.

<sup>41</sup> Petition, at 11. The city has a significant suburban area immediately adjacent to the City of Houma.

<sup>42</sup> *Id.*

an Urbanized Area of 125,929,<sup>43</sup> while Gonzales is a very small community within a much larger Urbanized Area, population 479,019.<sup>44</sup>

25. The interdependence of Gonzales with the rest of the Baton Rouge Urbanized Area is shown by the extent to which community residents work in places in the larger metropolitan area other than Gonzales. Most residents of Gonzales work elsewhere in the area. Only 37.8% of the workers living in Gonzales work in that community, with the balance working elsewhere, while 60.9% of the workers residing in Houma work in that city.<sup>45</sup>

26. Gonzales does not have its own daily newspaper to cover local issues. There is a weekly newspaper, the *Gonzales Weekly*, with a weekly circulation of only 8,000, which covers issues of interest to Ascension Parish as well as Gonzales.<sup>46</sup> The daily newspaper relied on by most residents is the *Baton Rouge Daily Advocate*, circulation 96,239. In contrast, Houma has its own successful newspaper, the *Houma Courier*, daily circulation 19,471 (21,350 on Sunday), which is owned by the New York Times.<sup>47</sup>

27. The economy of Houma is independent and vibrant. Houma is a major regional medical center, with two major hospital centers, and is one of the primary worldwide hubs of the offshore oil industry.<sup>48</sup> Based on Clear Channel's Petition, it appears that the main claim to fame of Gonzales is being the "Jambalaya Capital of the World," and a bedroom community for

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<sup>43</sup> U. S. Census Bureau, *Profile of General Demographic Characteristics: 2000, Census 2000 Summary File 1 (SF 1) 100-Percent Data, Houma, LA Urbanized Area*.

<sup>44</sup> U. S. Census Bureau, *Profile of General Demographic Characteristics: 2000, Census 2000 Summary File 1 (SF 1) 100-Percent Data, Baton Rouge, LA Urbanized Area*.

<sup>45</sup> See Attachment K.

<sup>46</sup> *Gale Directory of Publications and Broadcast Media*, 136th edition.

<sup>47</sup> *Gale Directory of Publications and Broadcast Media*, 136<sup>th</sup> edition.

<sup>48</sup> See Attachment L.

workers at industrial plants located along the Mississippi River (but outside of Gonzales).<sup>49</sup> It relies on a single 87 bed hospital, although it has easy access to numerous large regional hospital centers in Baton Rouge, such as Baton Rouge General Medical Center, Our Lady of the Lake Regional Hospital, Mary Bird Perkins Cancer Center, Earl K. Long Memorial Hospital, and Summit Hospital. Houma is the hub of four routes of Good Earth Transit, which is operated by the Terrebonne Parish Consolidated Government; Gonzales lists no local transit system on the city web site.

28. Houma is outside of all rated Arbitron markets, and constitutes its own local advertising market, while Ascension Parish, in which Gonzales is located, is part of the Baton Rouge Arbitron Metro and Nielsen Metro. Only two FM stations, KSTE-FM and KCIL(FM), and one AM station, KFXV, are licensed to serve Houma (or any other community in Terrebonne Parish, the second largest parish (county) in Louisiana), and there are no local television stations.<sup>50</sup> While no station is licensed to Gonzales, that community is served by many radio and television stations within the Baton Rouge Urbanized Area. Baton Rouge is a top-100 Arbitron radio market, and is Nielsen Market 96.<sup>51</sup>

29. The Clear Channel Comments fail to address perhaps to most bizarre aspect of their proposal. Clear Channel could relocate the KSTE-FM transmitter from its present site to the allotment site proposed in the Petition while still providing a 70 dBu signal well beyond Houma! In other words, Clear Channel did not need to propose to reallocate KSTE-FM from

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<sup>49</sup> Petition, pp. 12-14 and Exhibit B. Jambalaya is an Acadian dish composed of rice, condiments, seafood and/or meat.

<sup>50</sup> There is one Class A station, KFOL-CA, licensed to Houma

<sup>51</sup> Baton Rouge is the 74<sup>th</sup> ranked radio advertising market by revenue, and is the 83<sup>rd</sup> largest Metro by population. BIA Financial Network, *Investing in Radio 2002*, 3<sup>rd</sup> Edition. See also, *Broadcasting & Cable Yearbook 2001* at B-165.

Houma to Gonzales in order to accommodate the move of WUSW from Hattiesburg to the New Orleans area. The two proposals are not mutually dependant. Clear Channel could have achieved its goal of moving WUSW to Westwego simply by filing a one-step minor change application to move the KSTE-FM transmitter site and downgrade the station from Class C to Class CO. Then it could have filed a much simpler rulemaking request to reallocate WUSW from Hattiesburg to the New Orleans area.

30. Just as the real reason for moving WUSW from Hattiesburg to Westwego is to move that station from a small market into the heart of the New Orleans radio market, the motive of the reallocation of KSTE-FM from Houma to Gonzales is for Clear Channel to gain yet another Baton Rouge station. The Clear Channel proposal is simply a hidden and *de facto* reallocation of the channel from Houma to the Baton Rouge Urbanized Area.

31. Moreover, it appears that the reference site used by Clear Channel was carefully chosen to minimize service to the Baton Rouge Urbanized Area **for purposes of this rulemaking proceeding only**. In fact, even if the proposed Westwego reallocation is made at the reference coordinates, it is possible to locate a transmitter significantly closer to Baton Rouge, thereby improving coverage. Attached **is** an engineering study showing the area in which the transmitter could be relocated, as well as a map showing the amount of service that could be provided to the Urbanized Area from the point in the open zone nearest to Baton Rouge.<sup>52</sup>

32. If Clear Channel were to actually locate a Westwego station east of the reference coordinates in the *NPRM*, even more area would open up as available for a Gonzales transmitter site even closer to Baton Rouge. In addition, one of the constraining factors is an allocation of Channel 282C2 at Bunkie, which clears Clear Channel's specified reference transmitter site by

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<sup>52</sup> See Attachment M.

only .78 kilometer.<sup>53</sup> Station KEZP, Bunkie, has a pending application to upgrade its station KEZP from Channel 282C3 to Channel 282C2, using that allotment. The site specified in the KEZP application clears the Gonzales transmitter site area by 23.66 kilometers.<sup>54</sup> Thus, in the near future it appears that one of the protective spacings which limit the ability of a Channel 281C0 station to be relocated to the northwest towards Baton Rouge will be removed. Such potential impacts cannot be ignored by the Commission.

33. The reason why Clear Channel would want to be in the Baton Rouge Urbanized area is obvious: it is several times the size of the Houma Urbanized Area: population 479,019, versus 125,929 in the Houma Urbanized Area. The potential advertising revenue also greatly favors a station serving the Baton Rouge area, rather than Houma. For example, the circulation of the Baton Rouge Daily Advocate is 96,239, versus 19,471 (21,350 on Sunday) for the Houma Courier.<sup>55</sup> Most importantly, Clear Channel already has a very strong competitive position in the Baton Rouge radio market, with two Class C FM stations WYNK-FM and WFMF), one Class C2 station (KRVE), and three AM stations with 5 kW or greater power (WJBO, WSKR and WYNK). Again, through this proposal Clear Channel seeks to avoid scrutiny of the media concentration that would otherwise face its attempt to acquire an additional outlet in the Baton Rouge market.

34. Based on its claim that Gonzales is outside all Urbanized Areas, Clear Channel has declined to provide a *Huntington* or a *Tuck* analysis with respect to that proposed community of license. Because Gonzales is in fact within the Baton Rouge Urbanized Area, the Commission may not act upon the pending rulemaking proposal without requiring the

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<sup>53</sup> Petition, Technical Exhibit, Figure 2.

<sup>54</sup> *Id.*

<sup>55</sup> *Gale Directory of Publications and Broadcast Media*, 136<sup>th</sup> edition.



submission of such a showing, as well as giving the public, including Guaranty, the opportunity to comment on and to rebut such a showing.<sup>56</sup> See *Kankakee and Park Forest, Illinois*, *supra*. This is not changed by the fact that a lightly-populated portion of Gonzales is outside the Baton Rouge Urbanized Area, or that a station at the proposed reference point would not serve all of the Baton Rouge Urbanized Area. See *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576 (1996) (*Tuck* showing required when the proposed community was only partly within an Urbanized Area and a station would serve less than 1 percent of the Urbanized Area). Without a *Tuck* showing, the proposed reallocation cannot be granted.

### **III. Alternative Proposal**

35. Guaranty's opposition to the reallocation of Channel 281 from Houma to Gonzales is based both on its concerns that the Section 307(b) criteria are being "gamed" to shift service from deserving smaller communities to larger urban areas, and its belief that a community as large and vital as Houma deserves competitive service from two FM stations. It does not oppose providing Gonzales with a local station, so long as such allocations are not simply subterfuges for a "move-ins" to Baton Rouge. Therefore, Guaranty proposed in its Notice of Rulemaking, as an alternative to the proposed reallocation and downgrade of Channel 281C from Houma to Channel 281C0 at Gonzales the following:

City	Channel	
	Existing	Proposed
Baton Rouge, Louisiana	251C, 264C1 268C, 273C,	251C, 268C, 273C
Gonzales, Louisiana	-----	264C 1

No changes would be made at Houma.

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<sup>56</sup> Guaranty will review any *Tuck* showing submitted by Clear Channel and submit responsive comments at an appropriate time.

36. In its contemporaneously filed Petition for Consolidation, Guaranty requested that its proposal be considered at the same time as the instant proceeding. Guaranty believes that this is appropriate because its proposal offers significant advantages to that proposed by Clear Channel. It will permit a first local service to be provided to Gonzales. No Section 307(b) preference is involved, as it involves the move of Station WTGE(FM) from Baton Rouge to Gonzales. WTGE is licensed to Guaranty Broadcasting Company of Baton Rouge, LLC (“Guaranty Baton Rouge”) a controlled affiliate of Guaranty, and which joins in this allocation request. Because both communities are components of the Baton Rouge Urbanized Area, no concerns regarding manipulation of Section 307(b) priorities are present. Station WTGE provides a 70 dBu signal to all of Gonzales. Baton Rouge is well served with radio service. In addition to the three allocated FM channels, there are four noncommercial FM stations” and seven AM stations<sup>58</sup> licensed to serve Baton Rouge. If Guaranty’s proposal is adopted, Guaranty Baton Rouge will promptly take such steps as are required to change the city of license of WTGE from Baton Rouge to Gonzales.

37. Adoption of Guaranty’s alternative proposal would eliminate the loss of service to 655,290 persons that results from the Clear Channel proposal to move KSTE-FM from Houma to Gonzales. Moreover, it would retain an important signal in a very low-lying area that is one of the most affected by recurrent tropical storm activity in the United States. There is a great demand for the public safety information that a wide area station can provide to Houma and Terrebonne Parish, a need much greater than facing Gonzales.

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According to the Commission’s CDBS system, these operate on Channels 203C3, 207C1, 212C3 and 216A.

<sup>58</sup>

According to CDBS, the following AM stations are licensed to Baton Rouge: WRBH, WIBR, WJBO, WNDC, WPFC, WXOK and WYNK.

38. Because of the important public interest questions raised, including avoiding withdrawal of one of only two FM channels from Houma and Terrebonne Parish, as well as the elimination of the substantial net population loss that would result from approval of the move of Channel 281C from Houma to Gonzales, a Public Notice should be issued consolidating such mlemaking with the instant proceeding and a decision issued which considers both alternatives. Moreover, while it is unclear that Guaranty's proposal constitutes a mutually exclusive proposal qualifying for "counterproposal" status under existing precedent, the fact is that Guaranty has made a timely proposal to locate an FM station in Gonzales. The Commission cannot consider the Clear Channel proposal to offer a "first local service," as the Guaranty proposal is equally eligible for that treatment. The only options available to deal with this conundrum are for the Commission to consolidate the two proposals, or to give neither party a first local service preference.

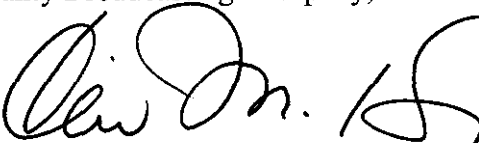
#### **IV. Conclusion**

The Commission should deny Clear Channel's proposed reallocation of WUSW from Hattiesburg, Mississippi, to Westwego, Louisiana and of KSTE-FM from Houma, Louisiana, to Gonzales, Louisiana. In no event can Clear Channel's Gonzales proposal be considered without submission of a ***Tuck*** showing, and the opportunity of others to test the veracity ~~of~~ that showing. The Commission should consider Guaranty's alternative proposal which permits Gonzales to gain its first local service without affecting Houma or creating a bogus preference under Section 307(b).

Respectfully submitted,

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